

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

KEENAN MCMILLEN,)	
)	
Plaintiff,)	
)	
vs.)	Civil Action No. 3:20-cv-192
)	District Judge Stephanie L. Haines
JOHN WETZEL and THE PENNSYLVANIA)	Magistrate Judge Maureen P. Kelly
DEPARTMENT OF CORRECTIONS,)	
)	
Defendants.)	

MEMORANDUM ORDER

This is a civil rights case brought by Plaintiff Keenan McMillen (“Plaintiff”) relating to his incarceration at State Correctional Institution at Houtzdale (“SCI- Houtzdale”). In his complaint (ECF No. 5), Plaintiff alleges prison officials failed to properly treat his substance use disorder, in violation of the Eighth and Fourteenth Amendments, the Pennsylvania Constitution, and Title II of the Americans with Disabilities Act (“ADA”). This matter was referred to Magistrate Judge Maureen P. Kelly for proceedings in accordance with the Federal Magistrates Act, 28 U.S.C. § 636, and Local Civil Rule 72.D.

On March 12, 2021, Defendants John Wetzel (“Wetzel”) and Pennsylvania Department of Corrections (“DOC”) (collectively “Defendants”), filed a motion to dismiss Plaintiff’s complaint (ECF No. 20) and a brief in support of that motion (ECF No. 21). Plaintiff filed a response (ECF No. 25) to the motion to dismiss on March 30, 2021. On April 12, 2021, Defendants filed a reply (ECF No. 29) to Plaintiff’s response, and Plaintiff filed a response to that reply on April 27, 2021 (ECF No. 32).

On September 22, 2021, Magistrate Judge Kelly issued a Report and Recommendation (ECF No. 35) recommending that Defendants’ motion to dismiss (ECF No. 20) be granted in part

and denied in part. Specifically, Magistrate Judge Kelly recommended Defendants' motion to dismiss should be granted as to Plaintiff's Eighth and Fourteenth Amendment claims against Defendant DOC, and those claims should be dismissed with prejudice. Magistrate Judge Kelly recommended the motion to dismiss should otherwise be denied. The parties were advised objections to the Report and Recommendation (ECF No. 35) were due on October 6, 2021 for registered ECF users and on October 11, 2021 for unregistered ECF users. No party filed objections, and the time to do so has passed.

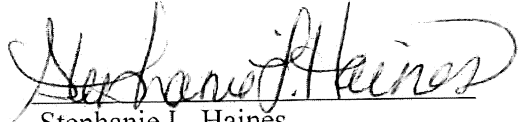
Upon review of the Report and Recommendation (ECF No. 35) and all documents of record under the applicable "reasoned consideration" standard, see *EEOC V. City of Long Branch*, 866 F.3d 93, 100 (3d Cir. 2017) (standard of review when no timely and specific objections are filed), and pursuant to Local Civil Rule 72.D.2, the Court will accept in whole the findings and recommendations of Magistrate Judge Kelly as the Opinion of this Court. Magistrate Judge Kelly correctly determined Plaintiff cannot maintain his Eighth and Fourteenth Amendment claims under Section 1983 against Defendant DOC, and it would be futile to permit Plaintiff to amend those claims. Magistrate Judge Kelly also correctly determined Defendants' motion to dismiss (ECF No. 20) should be denied as to Plaintiff's Section 1983 claims against Defendant Wetzel in his official capacity and Plaintiff's Pennsylvania Constitution and ADA claims against Defendants Wetzel and DOC.

Accordingly, the following order is entered:

ORDER OF COURT

AND NOW, this 2nd day of November, 2021, IT IS ORDERED that Magistrate Judge Kelly's Report and Recommendation (ECF No. 35) is hereby adopted as the Opinion of the Court; and,

IT IS FURTHER ORDERED that Defendants' motion to dismiss (ECF No. 20) is GRANTED in part and DENIED in part. Defendants' motion to dismiss Plaintiff's Eighth Amendment and Fourteenth Amendment claims against Defendant Pennsylvania Department of Corrections is GRANTED and said claims are hereby DISMISSED WITH PREJUDICE. Defendants' motion to dismiss (ECF No. 20) is DENIED in all other respects.



Stephanie L. Haines
United States District Judge